

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES PAUL SUMMERS,

Petitioner

v.

DECISION AND ORDER

10-CR-0138S

13-CV-0281S

UNITED STATES OF AMERICA,

Defendant.

1. Presently before this Court is Petitioner's motion for a certificate of appealability with respect to the September 2014 denial of his 28 U.S.C. § 2255 petition. For a certificate of appealability to issue, the petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In denying the petition at issue, this Court determined that Petitioner failed to make the requisite "substantial showing" that "reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Rhagi v. Artuz, 309 F.3d 103, 106 (2d Cir. 2002) (per curiam) (citations and internal quotation marks omitted), *cert denied*, 538 U.S. 950 (2003); (see Docket No. 69 at 8.)

2. Further, to the extent the present application may be considered a motion for reconsideration, that also must be denied. Reconsideration of a prior decision is generally justified where there exists: (1) an intervening change in controlling law; (2) new evidence; or (3) the need to correct a clear error of law or to prevent manifest injustice. See Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd., 956 F.2d 1245, 1255 (2d Cir.1992) *cert denied*, 506 U.S. 816 (1992); see also Amerisure Ins. Co. v. Laserage Tech. Corp., No. 96-CV-

6313, 1998 WL 310750, *1 (W.D.N.Y. Feb. 12, 1998) (citing United States v. Adegbite, 877 F.2d 174, 178 (2d Cir. 1989), *cert denied*, 493 U.S. 956 (1989)). Here, Petitioner's motion merely asserts variations of the allegations contained in the original petition. Inasmuch as a motion for "[r]econsideration is not a proper tool to repackage and relitigate arguments and issues already considered by the [C]ourt in deciding the original motion," Salamon v. Our Lady of Victory Hosp., 867 F. Supp. 2d 344, 360 (W.D.N.Y. 2012), petitioner's motion is therefore denied.

IT HEREBY IS ORDERED, that Petitioner's motion for a certificate of appealability pursuant to 28 U.S.C. § 2253(c) (Docket No. 70) is DENIED.

SO ORDERED.

Dated: November 19, 2014
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court